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McINTOSH and MARCI SILVER

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ROGER McINTOSH and MARCI SILVER,  
Plaintiffs,

v.

CITY OF HAYWARD, et al., Defendants.

Case No. C 08 05555 (JL)

STIPULATION FOR PROTECTION OF  
DOCUMENTS AND PROPOSED  
PROTECTIVE ORDER: POLICE  
PERSONNEL RECORDS

Plaintiffs Roger McIntosh and Marci Silver, and Defendants City of Hayward, Lloyd  
Lowe, Michael Goodness, Mayse Taylor and Michael Creighton through their respective attorneys  
of record, stipulate to the following order:

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential,  
proprietary, or private information for which special protection from public disclosure and from  
use for any purpose other than prosecuting this litigation would be warranted. Accordingly, the  
parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order.  
The parties acknowledge that this Order does not confer blanket protections on all disclosures or  
responses to discovery and that the protection it affords extends only to the limited information or  
items that are entitled under the applicable legal principles to treatment as confidential. The

parties further acknowledge, as set forth in Section 10, below, that this Stipulated Protective Order creates no entitlement to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and reflects the standards that will be applied when a party seeks permission from the court to file material under seal.

## 2. DEFINITIONS

2.1 Party: any party to this action, including all of its officers, directors, employees, consultants, retained experts, and outside counsel (and their support staff).

2.2 Disclosure or Discovery Material: all items or information, regardless of the medium or manner generated, stored, or maintained (including, among other things, testimony, transcripts, or tangible things) that are produced or generated in disclosures or responses to discovery in this matter.

2.3 "Confidential" Information or Items: information (regardless of how generated, stored, maintained, or whether or not marked as "CONFIDENTIAL" at the time of production to Plaintiffs and Defendants) or tangible things that qualify for protection under standards developed under F.R.Civ.P. 26(c). This material includes but is not limited to the following categories of documents: documents relating to Hayward Police Department ("HPD") policies and training.

2.4 "Highly Confidential – Attorneys' Eyes Only" Information or Items: extremely sensitive "Confidential Information or Items" whose disclosure to another Party or nonparty would create a substantial risk of serious injury that could not be avoided by less restrictive means. This material includes but is not limited to the following categories of documents: documents relating to HPD officers Michael Goodness, Mayse Taylor, and Michael Creighton: personnel file (five years before subject incident), evaluation (five years before subject incident), internal affairs investigation regarding the subject incident, internal affairs investigations (five years prior to the subject incident), disciplinary finding regarding the subject incident, if any, disciplinary findings, if any (five years prior to the subject incident), citizen's complaints regarding the subject incident, citizen's complaints (five years prior to the subject

1 incident), and training (five years prior to the subject incident). In order to protect the officers'  
 2 right to privacy, inter alia, Plaintiffs, their Counsels of record, and their employees, agents,  
 3 servants, or volunteers further agree that they shall not cause any subpoena to be issued, or  
 4 otherwise perform any discovery, from any third party that may have documentation or  
 5 information relating to said officers, without the prior written consent of Defendants' Counsel and  
 6 the aforementioned officers.

7       2.5 Receiving Party: a Party that receives Disclosure or Discovery Material from a  
 8 Producing Party.

9       2.6 Producing Party: a Party or non-party that produces Disclosure or Discovery  
 10 Material in this action.

11       2.7. Designating Party: a Party or non-party that designates information or items  
 12 that it produces in disclosures or in responses to discovery as "Confidential" or "Highly  
 13 Confidential — Attorneys' Eyes Only."

14       2.8 Protected Material: any Disclosure or Discovery Material that is designated as  
 15 "Confidential" or as "Highly Confidential – Attorneys' Eyes Only."

16       2.9. Outside Counsel: attorneys who are not employees of a Party but who are  
 17 retained to represent or advise a Party in this action.

18       2.10 House Counsel: attorneys who are employees of a Party.

19       2.11 Counsel (without qualifier): Outside Counsel and House Counsel (as well as  
 20 their support staffs).

21       2.12 Expert: a person with specialized knowledge or experience in a matter  
 22 pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert  
 23 witness or as a consultant in this action and who is not a past or a current employee of a Party or  
 24 of a competitor of a Party's and who, at the time of retention, is not anticipated to become an  
 25 employee of a Party or a competitor of a Party's. This definition includes a professional jury or  
 26 trial consultant retained in connection with this litigation. It also includes any of plaintiffs', or  
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1 officers' treating physicians, psychiatrists, psychologists, counselors or other medical staff related  
2 to treatment or visit at a medical facility.

3       2.13 Professional Vendors: persons or entities that provide litigation support  
4 services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations;  
5 organizing, storing, retrieving data in any form or medium; etc.) and their employees and  
6 subcontractors.

### 7       3. SCOPE

8 The protections conferred by this Stipulation and Order cover not only Protected Material (as  
9 defined above), but also any information copied or extracted therefrom, as well as all copies,  
10 excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by  
11 parties or counsel to or in court or in other settings that might reveal Protected Material.

### 12       4. DURATION

13 Even after the termination of this litigation, the confidentiality obligations imposed by this Order  
14 shall remain in effect until a Designating Party agrees otherwise in writing or a court order  
15 otherwise directs.

### 16       5. DESIGNATING PROTECTED MATERIAL

17       5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party  
18 or non-party that designates information or items for protection under this Order must take care to  
19 limit any such designation to specific material that qualifies under the appropriate standards. A  
20 Designating Party must take care to designate for protection only those parts of material,  
21 documents, items, or oral or written communications that qualify – so that other portions of the  
22 material, documents, items, or communications for which protection is not warranted are not  
23 swept unjustifiably within the ambit of this Order. Mass, indiscriminate, or routinized  
24 designations are prohibited. Designations that are shown to be clearly unjustified, or that have  
25 been made for an improper purpose (e.g., to unnecessarily encumber or retard the case  
26 development process, or to impose unnecessary expenses and burdens on other parties), expose  
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1 the Designating Party to sanctions. If it comes to a Party's or a non-party's attention that  
 2 information or items that it designated for protection do not qualify for protection at all, or do not  
 3 qualify for the level of protection initially asserted, that Party or non-party must promptly notify  
 4 all other parties that it is withdrawing the mistaken designation.

5       5.2 Manner and Timing of Designations. Except as otherwise provided in this Order  
 6 (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered,  
 7 material that qualifies for protection under this Order must be clearly so designated before the  
 8 material is disclosed or produced.

9       Designation in conformity with this Order requires:

10           (a) for information in documentary form (apart from transcripts of depositions  
 11 or other pretrial or trial proceedings), that the Producing Party affix the legend  
 12 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" at the top  
 13 of each page that contains protected material. If only a portion or portions of the material on a  
 14 page qualifies for protection, the Producing Party also must clearly identify the protected  
 15 portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each  
 16 portion, the level of protection being asserted (either "CONFIDENTIAL" or "HIGHLY  
 17 CONFIDENTIAL – ATTORNEYS' EYES ONLY").

18           A Party or non-party that makes original documents or materials available for  
 19 inspection need not designate them for protection until after the inspecting Party has indicated  
 20 which material it would like copied and produced. During the inspection and before the  
 21 designation, all of the material made available for inspection shall be deemed "HIGHLY  
 22 CONFIDENTIAL – ATTORNEYS' EYES ONLY."

23           (b) for testimony given in deposition or in other pretrial or trial proceedings,  
 24 that the Party or non-party offering or sponsoring the testimony identify on the record, before the  
 25 close of the deposition, hearing, or other proceeding, all protected testimony, and further specify  
 26 any portions of the testimony that qualify as "HIGHLY CONFIDENTIAL – ATTORNEYS'

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1 EYES ONLY.” When it is impractical to identify separately each portion of testimony that is  
 2 entitled to protection, and when it appears that substantial portions of the testimony may qualify  
 3 for protection, the Party or non-party that sponsors, offers, or gives the testimony may invoke on  
 4 the record (before the deposition or proceeding is concluded) a right to have up to 20 days to  
 5 identify the specific portions of the testimony as to which protection is sought and to specify the  
 6 level of protection being asserted (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
 7 ATTORNEYS’ EYES ONLY”). Only those portions of the testimony that are appropriately  
 8 designated for protection within the days shall be covered by the provisions of this Stipulated  
 9 Protective Order. Transcript pages containing Protected Material must be separately bound by the  
 10 court reporter, who must affix to the top of each such page the legend “CONFIDENTIAL” or  
 11 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” as instructed by the Party or  
 12 nonparty offering or sponsoring the witness or presenting the testimony.

13 (c) for information produced in some form other than documentary, and for  
 14 any other tangible items, that the Producing Party affix in a prominent place on the exterior of the  
 15 container or containers in which the information or item is stored the legend “CONFIDENTIAL”  
 16 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only portions of the  
 17 information or item warrant protection, the Producing Party, to the extent practicable, shall  
 18 identify the protected portions, specifying whether they qualify as “Confidential” or as “Highly  
 19 Confidential – Attorneys’ Eyes Only.”

20 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
 21 designate qualified information or items as “Confidential” or “Highly Confidential – Attorneys’  
 22 Eyes Only” does not, standing alone, waive the Designating Party’s right to secure protection  
 23 under this Order for such material. If material is appropriately designated as “Confidential” or  
 24 “Highly Confidential – Attorneys’ Eyes Only” after the material was initially produced, the  
 25 Receiving Party, on timely notification of the designation, must make reasonable efforts to assure  
 26 that the material is treated in accordance with the provisions of this Order.

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**6.1 Timing of Challenges.** Unless a prompt challenge to a Designating Party's

**6.2 Meet and Confer.** A Party that elects to initiate a challenge to a Designating

**6.3 Judicial Intervention.** A Party that elects to press a challenge to a confidentiality

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7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed by another Party or by a non-party in connection with this case only for prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the litigation has terminated, a Receiving Party must comply with the provisions of section 11, below (FINAL DISPOSITION). Protected Material must be stored and maintained by a Receiving Party at a secure location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

**7.2 Disclosure of “CONFIDENTIAL” Information or Items.** Unless otherwise

(a) the Receiving Party's Counsel of record in this action, as well as

(b) the officers, directors, and employees (including House Counsel) of the  
ty to whom disclosure is reasonably necessary for this litigation and who have  
greement to Be Bound by Protective Order” (Exhibit A);

(c) experts (as defined in this Order) of the Receiving Party to whom

(d) the Court and its personnel;

(e) court reporters, their staffs, and professional vendors to whom disclosure is necessary for this litigation and who have signed the “Agreement to Be Bound by Order” (Exhibit A);



(f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A). Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order. In the event the parties cannot agree upon whether disclosure is "reasonably necessary" said parties shall meet and confer on the matter and if there is no resolution may seek relief from the Court;

(g) the author of the document or the original source of the information and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A).

### 7.3 Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"

Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" only to:

(a) the Receiving Party's Counsel of record in this action, as well as employees of said Counsel to whom it is reasonably necessary to disclose the information for this litigation and who have signed the "Agreement to Be Bound by Protective Order" that is attached hereto as Exhibit A;

(b) experts (as defined in this Order) (1) to whom disclosure is reasonably necessary for this litigation, (2) who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

(c) the Court and its personnel;

(d) court reporters, their staffs, and professional vendors to whom disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A); and

(e) the author of the document or the original source of the information and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

(f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the "Agreement to be Bound by Protective Order". Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order. In the event the parties cannot agree upon whether disclosure is "reasonably necessary" said parties shall meet and confer on the matter and if there is no resolution may seek relief from the Court.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION.

If a Receiving Party is served with a subpoena or an order issued in other litigation that would compel disclosure of any information or items designated in this action as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," the Receiving Party must so notify the Designating Party, in writing (by fax, if possible) immediately and in no event more than three court days after receiving the subpoena or order. Such notification must include a copy of the subpoena or court order.

The Receiving Party also must immediately inform in writing the Party who caused the subpoena or order to issue in the other litigation that some or all the material covered by the subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must deliver a copy of this Stipulated Protective Order promptly to the Party in the other action that caused the subpoena or order to issue.

The purpose of imposing these duties is to alert the interested parties to the existence of this Protective Order and to afford the Designating Party in this case an opportunity to try to protect its confidentiality interests in the court from which the subpoena or order issued. The Designating Party shall bear the burdens and the expenses of seeking protection in that court of its confidential material – and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

1           9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

2 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected  
3 Material to any person or in any circumstance not authorized under this Stipulated Protective  
4 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the  
5 unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected Material, (c)  
6 inform the person or persons to whom unauthorized disclosures were made of all the terms of this  
7 Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to  
8 Be Bound" that is attached hereto as Exhibit A.

9           10. FILING PROTECTED MATERIAL. Without written permission from the Designating  
10 Party or a court order secured after appropriate notice to all interested persons, a Party may not file  
11 in the public record in this action any Protected Material. A Party that seeks to file under seal any  
12 Protected Material must comply with Civil Local Rule 79-5.

13           11. FINAL DISPOSITION. Unless otherwise ordered or agreed in writing by the  
14 Producing Party, within sixty days after the final termination of this action defined as the  
15 dismissal or entry of judgment by the district court, or if an appeal is filed, the disposition of the  
16 appeal, each Receiving Party must return all Protected Material to the Producing Party. As used in  
17 this subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries  
18 or any other form of reproducing or capturing any of the Protected Material. With permission in  
19 writing from the Designating Party, the Receiving Party may destroy some or all of the Protected  
20 Material instead of returning it. Whether the Protected Material is returned or destroyed, the  
21 Receiving Party must submit a written certification to the Producing Party (and, if not the same  
22 person or entity, to the Designating Party) by the sixty day deadline that identifies (by category,  
23 where appropriate) all the Protected Material that was returned or destroyed and that affirms that  
24 the Receiving Party has not retained any copies, abstracts, compilations, summaries or other forms  
25 of reproducing or capturing any of the Protected Material. Notwithstanding this provision,  
26 Counsel are entitled to retain an archival copy of all pleadings, motion papers, transcripts, legal  
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1 memoranda, correspondence or attorney work product, even if such materials contain Protected  
2 Material. Any such archival copies that contain or constitute Protected Material remain subject to  
3 this Protective Order as set forth in Section 4 (DURATION), above.

4 12. MISCELLANEOUS

5 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person  
6 to seek its modification by the Court in the future.

7 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective  
8 Order no Party waives any right it otherwise would have to object to disclosing or producing any  
9 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no  
10 Party waives any right to object on any ground to use in evidence of any of the material covered  
11 by this Protective Order.

12  
13 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

14  
15 DATED: August 18, 2009 /s/  
16 Gayla B. Libet  
17 Attorneys for Plaintiffs Roger McIntosh and Marci Silver

18 DATED: August 18, 2009 /s/  
19 Randolph S. Hom  
20 Attorneys for Defendants City of Hayward,  
21 Lloyd Lowe, Michael Goodness, Mayse Taylor, and  
22 Michael Creighton

23  
24 PURSUANT TO STIPULATION, IT IS SO ORDERED.

25 DATED: \_\_\_\_\_  
26 Magistrate Judge James Larson  
27 United States District Court  
28

1 memoranda, correspondence or attorney work product, even if such materials contain Protected  
2 Material. Any such archival copies that contain or constitute Protected Material remain subject to  
3 this Protective Order as set forth in Section 4 (DURATION), above.

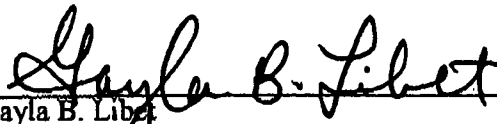
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8 Order no Party waives any right it otherwise would have to object to disclosing or producing any  
9 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no  
10 Party waives any right to object on any ground to use in evidence of any of the material covered  
11 by this Protective Order.

12  
13 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

14  
15 DATED: 8-18-09

  
Gayla B. Libet  
Attorneys for Plaintiffs Roger McIntosh and Marci Silver

16  
17  
18 DATED: \_\_\_\_\_

\_\_\_\_\_  
Randolph S. Hom  
Attorneys for Defendants City of Hayward,  
Lloyd Lowe, Michael Goodness, Mayse Taylor, and  
Michael Creighton

19  
20  
21 PURSUANT TO STIPULATION, IT IS SO ORDERED.

22  
23 DATED: September 29, 2009


  
Magistrate Judge James Larson  
United States District Court

EXHIBIT A  
ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California on [date] in the case of Roger McIntosh, et al. v. City of Hayward, et al. United States District Court Case No. C08 05555 (JL). I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint \_\_\_\_\_ [print or type full name] of \_\_\_\_\_ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

[printed name]

Signature: \_\_\_\_\_

[signature]